



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 155  
Seattle, WA 98101-3123

OFFICE OF WATER AND  
WATERSHEDS

NOV 16 2018

Mr. Richard Whitman, Director  
Oregon Department of Environmental Quality  
700 NE Multnomah St., Suite #600  
Portland, Oregon 97232

Dear Mr. Whitman:

By this letter, the U.S. Environmental Protection Agency (EPA) is taking action to comply with the U.S. District Court for the Western District of Washington's October 17, 2018, Order regarding Motions for Summary Judgment in *Columbia Riverkeeper, et al. v. Pruitt, et al.*, No. C17-289RSM. In that order, the district court directed the EPA to approve or disapprove within 30 days a "constructive submission" of "no" total maximum daily loads (TMDLs) by the Oregon Department of Environmental Quality (ODEQ) for 1 segment of the Mainstem of the Columbia River identified in the Enclosure as impaired for temperature on Oregon's Clean Water Act section 303(d) List.

The EPA respectfully disagrees with and may appeal the district court's order. The EPA's position, as reflected in its briefing to date before the district court, is that there has been no constructive submission by ODEQ for the temperature impairments on this listed segment. As such, the EPA would not have taken this action if it had not been ordered to do so by the district court. The EPA expressly reserves the right to withdraw or revise this action in whole or in part if it obtains a judicial decision on appeal that relieves the EPA of the obligations contained in the district court's October 17, 2018, order.

As of the date of this letter, EPA and the U.S. Department of Justice are evaluating whether to appeal the district court's order. The EPA had sought and was denied a 30-day extension to consider an appeal, notwithstanding the 60 days otherwise applicable under Rule 4(b) of the Federal Rules of Appellate Procedure for decision-making regarding appeals when a federal agency is a party. Accordingly, despite its disagreement with the court's order, the EPA is complying with that order by taking this action based on the administrative record as it existed at the time of the district court's order.

The EPA disapproves ODEQ's "constructive submission" of "no" TMDL for temperature because the EPA has determined that it does not meet the statutory requirements in Clean Water Act section 303(d)(1)(C) and (d)(2), and the regulatory requirements for the EPA approval set forth in 40 C.F.R. section 130.7(c).

If you have any questions regarding this matter, please contact me at (206) 553-1855, or have your staff contact Jennifer Byrne at (503) 326-5872, or Mary Lou Soscia at (503) 326-5873.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel D. Opalski", is written over the typed name.

Daniel D. Opalski  
Director

Enclosure

**Enclosure**

***Oregon 303(d) Temperature Impairments on the Columbia River***

<b><i>Waterbody</i></b>	<b><i>Assessment unit</i></b>	<b><i>River mile</i></b>
Columbia River	1240480000000	0 – 303.9

**Applicable State of Oregon Water Quality Standards for Temperature**

The stream segment listed in the table above was identified by ODEQ as not attaining Oregon water quality standards, set forth in Chapter 340, Division 41 of the Oregon Administrative Rules, for aquatic life use categories that are described using key species (e.g., salmonid or char versus warm-water species) and life-stage conditions (e.g., spawning versus rearing) [OAR 340-041].